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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,043	09/26/2006	Fritz Krause	85934.000055	8089
23387	7590	11/20/2009		
Stephen B. Salai, Esq.			EXAMINER	
Harter Secrest & Emery LLP			REDMAN, JERRY E	
1600 Bausch & Lomb Place				ART UNIT
Rochester, NY 14604-2711				PAPER NUMBER
			3634	
			NOTIFICATION DATE	DELIVERY MODE
			11/20/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

bsalai@hselaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/550,043 Examiner Jerry Redman	KRAUSE, FRITZ Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 01 July 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

The status of the claims is as follows:

Claims 1-26 (14-26 newly added) are herein addressed below.

Throughout the claims, the applicant recites the phraseology “preferably”, which is objected to by the Examiner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 10-14, 16-21, and 23-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mesnel (4,470,223). As shown in Figures 3-6, Mesnel (4,470,223) discloses a one piece (column 2, lines 13-18) elastomeric weather seal comprising two U-shaped reinforced metal core mounting elements (two parallel sides and a middle portion, i.e., a connecting brace as recited in the patent) attached to a door frame, hollow sealing lips (shown in figure 6 but replaceable with any of the sealing lips in the embodiments, column 2, lines 37-38), flocking on the hollow sealing lips, flocking on a bottom portion forming the channel for guiding a window pane, and retaining lips projecting from the U-shaped reinforced mounting elements.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesnel ('223) in view of Herr (3,333,364). All of the elements of the instant invention are discussed in detail above except providing a hollow seal along a bottom/base portion. Herr ('364) discloses a weather seal having a base portion (2) with a hollow portion (33). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the weather seal of Mesnel ('223) with a hollow sealing portion along the bottom/base portion as taught by Herr ('364) since the bottom portion having a hollow sealing element enhances the sealing characteristics of the weather seal thereby improving the seal between the window pane and the door frame.

Claims 9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesnel ('223) in view of Patent application publication no. 2003/0019160 to Oda et al. All of the elements of the instant invention are discussed in detail above except providing a hollow sealing element divided by a web. Patent application publication no. 2003/0019160 to Oda et al. disclose a weather strip having a hollow sealing element (30) having a web projecting from a U-shaped mount of a weather strip. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the weather strip of Mesnel ('223) with a hollow seal with a web as taught by Patent

application publication no. 2003/0019160 to Oda et al. since a hollow seal portion having a web increases the sealing characteristics between the weather strip and the frame since the hollow portion allows flexibility and the web provides rigidity to the hollow portion.

The applicant's arguments have been considered but are not deemed to be persuasive. The applicant states that the sealing structure in Mesnel ('223) is formed of separate pieces. The Examiner respectively disagrees. The connector brace (6) which extends between two U-shaped portions are connected together and only along a portion of the window opening is the spacer omitted. The applicant also argues that Herr is outdated and that seals and doors where formed differently than today's sealing structures. Although the Examiner admits that the Herr reference is old, it is clearly shown in Herr that providing hollow portions along and between sealing surfaces are well known since a hollow portion allows great surface area to be contacted as well as providing greater tolerances thereby enhancing and improving a sealing structure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Redman whose telephone number is 571-272-6835. The examiner can normally be reached on M-TH from 8 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Mitchell, can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jerry Redman  
Primary Examiner  
Art Unit 3634

/Jerry Redman/  
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